

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

E.G., individually and as parent and natural guardian of A.I. and L.I., minor children; M.M., individually and as parent and natural guardian of E.H., L.H., Ev.P., and E.P., minor children; O.M., individually and as parent and natural guardian of A.M., a minor child; and COALITION FOR THE HOMELESS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF EDUCATION; RICHARD A. CARRANZA, as Chancellor of the New York City Department of Education; NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES; STEVEN BANKS, as Commissioner of the New York City Department of Social Services; NEW YORK CITY DEPARTMENT OF HOMELESS SERVICES; JOSLYN CARTER, as Administrator of the New York City Department of Homeless Services; NEW YORK CITY HUMAN RESOURCES ADMINISTRATION; GARY JENKINS as Administrator of the New York City Human Resources Administration; NEW YORK CITY DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS; and JESSICA TISCH, as Commissioner of the New York City Department of Information Technology and Telecommunications,,

Defendants.

CIVIL ACTION NO. 1:20-cv-9879 (AJN)

**DECLARATION OF MICHAEL MCGRATH IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Michael McGrath, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am the Deputy Commissioner and Chief Operating Officer at the New York City Department of Information Technology & Telecommunications (“DoITT”). I submit this Declaration in support of the defendants’ opposition to plaintiffs’ motion for a preliminary injunction. As Deputy Commissioner and Chief Operating Officer, my responsibilities include oversight of DoITT’s Infrastructure, Applications, Security and Support for non-public safety systems. I am providing executive leadership with a deep involvement in the efforts associated with broadband deployment detailed in this declaration. I am familiar with the matters set forth herein, based on my personal knowledge, experience and observations, conversations with DoITT staff, and review of documents.

2. On March 15, 2020, Mayor de Blasio announced that New York City’s vast system of over 1,800 public schools would close as a result of the Covid-19 pandemic and that the City, through the New York City Department of Education (DOE), would undertake the enormous challenge of shifting to educating remotely the system’s 1.1 million students, many of whom had limited internet access. Since that date, DoITT has assisted the DOE with, and been closely involved in, the City of New York’s (the “City”) extraordinary and ongoing efforts to address the technology needs and challenges created by this monumental shift in the lives of 1.1 million students.

3. When it became apparent that the schools would need to close in March of 2020, the City recognized that it would have to act quickly to secure technology and internet access for hundreds of thousands of students who did not have an internet-connected device at home. The Mayor and DoITT Commissioner Jessica Tisch immediately reached out to senior executives at Apple and secured the company’s commitment to provide the City with 300,000 iPads to

distribute to students. Commissioner Tisch also immediately reached out to senior executives at the major cellular service providers to solicit offers to provide cellular data service plans for the iPads and secured T-Mobile’s commitment to provide unlimited cellular data plans for the iPads at affordable rates.

4. Distributing approximately 300,000 iPads that students could immediately utilize upon receipt at their homes during the height of the pandemic in New York City was an unprecedented operational and logistical challenge and required the mobilization of significant resources. In March and April 2020, DoITT, working with IBM, set up 4 warehouses that were used as locations for contractors to unpack the iPads provided by Apple, provision them with T-Mobile SIM cards, download apps and other programs for students to utilize, and repackaging them with cases for shipment directly to students at their homes. Recognizing that students residing in New York City shelters would likely not have access to suitable technology and/or the internet, the DOE prioritized the distribution of iPads to those students first. Due to the extraordinary efforts of everyone involved, the distribution of the first 300,000 iPads was largely completed by early May. Subsequently, DOE purchased and provisioned an additional 50,000 iPads. We are now in the process of obtaining, provisioning and delivering another 100,000 iPads to meet the ongoing needs of students.

5. After schools reopened in the middle of September, DoITT worked with DOE and the New York City Department of Social Services (“DSS”) to strategize on how to address problems that some students at shelters were having connecting to the internet utilizing the iPads the City provided. Ultimately, DOE undertook an effort to switch the cellular data plans for the iPads of affected students from T-Mobile to Verizon, because in certain parts of the City,

Verizon's network may provide more reliable cellular service than T-Mobile. These efforts are detailed in the declaration of Anuraag R. Sharma.

6. Beginning in the middle of October, DoITT was asked to begin exploring options for the installation of WiFi at New York City shelters to provide additional options for students.

7. The installation of WiFi at 202 shelter buildings selected by DSS for this project is an enormous undertaking. In order to provide students with the most optimal WiFi connections, each apartment within the shelter must be wired and provided an in-unit cable modem. DoITT considered less robust alternatives, such as only wiring common areas within the shelters, but DSS and DOE determined, and DoITT agreed, that it was not advisable to require students to congregate in common areas in order to access the internet during a pandemic. In addition, wiring only common areas would introduce technical challenges and limitations regarding the number of students that could simultaneously connect using the installed access points, and the shared consumption of bandwidth.

8. Many of the shelter buildings are not connected to the external carrier's cable infrastructure in the street and do not have the in-building infrastructure required to run the WiFi cable throughout the building (e.g., risers, conduit, etc.). For these buildings, the cable in the street must be wired into the building, then through newly constructed risers inside the building (e.g. elevator shafts or stairwells) in order to reach each floor, and then through newly constructed conduit in hallways and then into individual apartments. As a result, the installation of WiFi in many of the shelters will require construction projects customized for each building and unit. In some cases, shelters may have some existing internal infrastructure, such as risers, but that infrastructure may need to be updated or replaced. While the work required to install WiFi at each of the 202 shelter buildings selected by DSS for this project may vary, we expect,

and initial surveys confirm, that a large portion of the shelters will require significant construction in order to provide WiFi connection and cable modems within each apartment.

9. In the middle of October, DoITT reached out to Charter Communications, (“Charter”) and Altice USA, (“Altice”), which hold residential cable franchise to provide residential cable (and therefore, internet) services in New York City¹, in order to discuss the potential installation of WiFi connectivity at New York City shelters. These companies were selected based on the size of their existing footprints (i.e., their wire was already in or nearby all of the buildings), and their ability to marshal crews to perform the necessary construction work (e.g., installation of risers and conduit). .

10. On October 27, 2020, the Mayor directed DoITT to roll out the installation of WiFi at all New York City shelters. In less than one week, on November 1, Altice executed documentation with DoITT to install WiFi at shelters located within the geographic coverage of its franchise, as well as to provide all modems and routers, ongoing service and to provide quality guarantees for upload and download speeds. Charter executed similar documentation on November 6. Given the significance of this issue, and the City’s commitment to this effort, the parties went through extraordinary efforts to quickly finalize these documents. And both companies commenced surveys and start-up work even while the lawyers were hammering out the agreements.

11. Pursuant to those agreements, Charter will install WiFi at 58 shelter buildings and Altice will install WiFi at 144 shelters.²

¹ Charter’s franchise covers Manhattan, Queens, Staten Island and a small portion of Brooklyn. Altice’s franchise covers the majority of Brooklyn and the Bronx.

² DSS provided us with the list of shelter buildings for this project. The Declarations of Erica Dean and Nicole Doniger explain how that list was developed.

12. For each site, Charter and Altice must first undertake a site survey. They must walk through the building to compare the actual layout with the floorplans and determine what, if any, existing infrastructure exists. They must examine the condition of any existing cabling, which may have been touched by multiple vendors over time and may need to be replaced. They have to determine the entrance point for cabling into the building and confirm the servicing manhole or pole, if aerial cable is involved, that will be utilized to bring the cable into the building. They must test the signal strength at the location in order to ensure that the installation will not saturate the network once the building is connected. The site surveys are then reviewed by several teams at Charter and Altice in order to confirm the design plans and to create costing. After completing a site survey, Charter and Altice also have to secure all the necessary materials and confirm these plans with their subcontractors that will complete the work. Charter and Altice have multiple crews that are working at various sites at the same time, so they must coordinate to schedule these crews at the various locations. They must also coordinate with DSS in order to ensure they will have access to the site. They must secure the necessary permits and ensure that certificates of insurance are in place for each location.

13. After Charter and Altice have completed the survey and design work, they submit a work order to DoITT, detailing the construction work and materials and a cost estimate. Once DoITT approves the work order, which are turned around within 24-hours, the parties execute a Special/Custom Construction Order Agreement (“SCCOA”) detailing the construction work and costs for the site and a Service Order Form (“SOF”), to cover the ongoing monthly charges for each apartment.

14. In the approximately one month since DoITT got approval to move forward with this program, we have made extraordinary progress. Charter has completed site surveys at 39 of

its 58 sites and Altice has completed site surveys at 118 of its 144 sites. Charter has submitted, and the City has approved and signed SCCOAs and SOFs for 37 sites. Altice has submitted, and the City has approved and signed, SCCOAs and SOFs for 40 sites.

15. We have provided both Charter and Altice a list of 30 priority sites, which will take priority over all other sites. These priority sites were identified by DSS based on information they collected about the conditions and experiences of students at those sites. Charter has 11 priority sites and has begun work at each of these sites, along with 10 additional sites. Charter has completed the installation project at one of its priority sites. Altice has 19 priority sites and has begun work at 8 of them, and has completed work at 1 of those 8. Altice also has many SCCOAs in place for the remaining priority sites and should be able to commence work at these sites shortly.

16. Ordinarily, these efforts - 157 site surveys, 77 signed SCCOAs, the commencement of work at 29 sites - would take months, but because DoITT has made this project one of its highest priorities, devoted commensurate resources to it, and made the urgency of this project very clear to Charter and Altice, we have been able to greatly expedite these projects.

17. DoITT is working very aggressively to manage the work being done by Charter and Altice in order to ensure that WiFi will be installed at all 30 priority sites before March 2021. Construction has been completed at 2 sites and we expect that construction will be completed, and WiFi installed, at additional sites this month, with many more completed in January and February.

18. These are complicated, significant construction projects. All but 3 of the sites for which SCCOAs have been approved and signed to date will require construction, some at a cost

of over \$150,000. So far, only 3 sites have been identified that have the infrastructure such that apartments can be connected to WiFi with only the installation of a modem within the apartment. One of those three sites is a priority site and has been completed. The other two locations are not among the 30 priority sites, but will be completed within the next few weeks. In construction projects of this scope and nature, any number of variables, such as weather, interruptions in access to the site, the availability of required materials, or complications in the cable installation, can cause unforeseen delays.

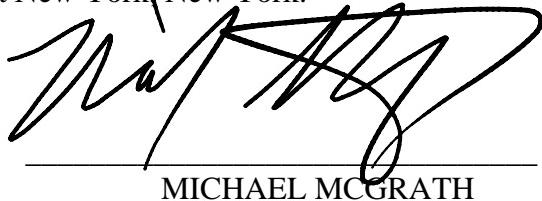
19. In parallel to working on the 30 priority sites, Charter and Altice can also assign crews to the secondary priority sites, some of which will be completed in the same timeframe, but due to the number of sites will stretch into the spring and summer of 2021. The process of getting this enormous project up and running at DoITT, and at Charter and Altice, has required the investment of significant upfront time and resources. DoITT has been focused on making sure that we identify and address potential issues at the start. As a result, as we move forward, DoITT expects the pace of construction will likely speed up.

20. A project of this nature would ordinarily be expected to take 2 years, if not more, to complete. However, given the importance of this issue, DoITT has prioritized this project within the agency and is aggressively managing Charter and Altice to meet the targeted completion of the end of Summer 2021.

21. I understand the plaintiffs in this case are seeking an injunction that would order the City to equip all shelters housing school-aged children with reliable WiFi access no later than January 4, 2021. For all of the reasons explained in this declaration, I am certain that that date is

unachievable and I believe the City's plan will provide quality service on a highly aggressive schedule.

DATED this 4 day of December 2020 at New York, New York.



MICHAEL MCGRATH